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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,727	10/27/2003	Michel Bunodiére	0584-1011	9707
466 7590 12/27/2007 YOUNG & THOMPSON 745 SOUTH 23RD STREET 2ND FLOOR ARLINGTON, VA 22202			EXAMINER DESANTO, MATTHEW F	
			ART UNIT 3763	PAPER NUMBER
			MAIL DATE 12/27/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.		Applicant(s)	
	10/692,727		BUNODIERE ET AL.	
	Examiner		Art Unit	
	Matthew F. DeSanto		3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f):
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: isosceles triangle, and trapezoidal cross-section.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 1 is rejected because it is unclear what the direction of the incision made for implanting the chamber is. The examiner has no way of determining this and thus making the claim indefinite.

Claim Rejections - 35 USC § 103

5. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tallarida et al. (USPN 6,527,754).

Tallarida et al. discloses an implantable chamber for the infusion of a medicament, which chamber is to be implanted subcutaneously by way of an incision in a body, of the type which comprises: a medicament reservoir, a region for access to the reservoir, which region is located at a vertex of the reservoir, is accessible from outside the body and is to enable the medicament reservoir to be filled, and a diffusion duct

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which is connected to the reservoir and which extends outside the latter, the diffusion duct having an external terminal portion, characterized in that: it comprises an outer casing surrounding the reservoir and having a base wall and an outer lateral wall extending from the base wall to the top of the reservoir, the contour of the base wall is substantially triangular and is such that the casing has a shape tapered towards a vertex of the triangle, the portion of the diffusion duct closest to the reservoir is surrounded by the casing, and the terminal portion of the diffusion duct, which portion is located outside the casing, but fails to teach the diffusion duct being substantially parallel to a side of the triangle.

At the time of the invention it would have been obvious for one of ordinary skill in the art to modify the device of Tallarida et al. because the specification fails to give criticality to the claimed invention and limitations and the modifications to Tallarida et al. would only take routine skill modify the device to meet the requirements of the claim.

The Supreme Court also recently ruled in the KSR case that it would be "obvious to try" therefore further supporting the examiner assertions that it would be obvious to change the device of Tallarida et al. so that the terminal duct was bent instead of being straight. When a catheter is attached to the terminal duct that portion is usually bent, therefore its well known to change the shape of the catheter or duct leaving the reservoir because of the insertion into the body.

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6. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lazorthes (USPN 4,718,894).

Lazorthes discloses an implantable chamber for the infusion of a medicament, which chamber is to be implanted subcutaneously by way of an incision in a body, of the type which comprises: a medicament reservoir, a region for access to the reservoir, a which region is located at a vertex of the reservoir, is accessible from outside the body and is to enable the medicament reservoir to be filled, and a diffusion duct which is connected to the reservoir and which extends outside the latter, the diffusion duct having an external terminal portion, an outer casing surrounding the reservoir and having a base wall and an outer lateral wall extending from the base wall to the top of the reservoir, the contour of the base wall is substantially triangular and is such that the casing has a shape tapered towards a vertex of the triangle, the portion of the diffusion duct closest to the reservoir is surrounded by the casing, and the terminal portion of the diffusion duct, which portion is located outside the casing, but fails to teach the diffusion duct being substantially parallel to a side of the triangle that is opposite the vertex, as well as the triangle being shaped like an isosceles triangle.

At the time of the invention it would have been obvious for one of ordinary skill in the art to modify the device of Lazorthes because the specification fails to give criticality to the claimed invention and limitations and the modifications to Lazorthes would only take routine skill modify the device to meet the requirements of the claim.

The Supreme Court also recently ruled in the KSR case that it would be "obvious to try" therefore further supporting the examiner assertions that it would be obvious to

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change the device of Lazorthes so that the vertex was located at a different angle in the triangle or that the terminal port be located at a different region to be or shape the outer contour to a different geometric shape to make the device more compact.

Response to Arguments

7. Applicant's arguments with respect to the claims above have been considered but are moot in view of the new ground(s) of rejection. The previous rejections were withdrawn based on the remarks and amendments to the claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ` whose telephone number is 571-272-4957. The examiner can normally be reached on Monday-Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick LUCCHESI can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Matthew DeSanto
Art Unit 3763
December 21, 2007

Primary Examiner